

ORIGINAL



0000018236

25H

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

2005 MAR 16 A 10:38

JEFF HATCH-MILLER, Chairman

WILLIAM A. MUNDELL

MARC SPITZER

MIKE GLEASON

KRISTIN K. MAYES

MAR 16 2005

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY

WJ

IN THE MATTER OF DIVERSIFIED WATER UTILITIES, INC. TO EXPAND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO INCLUDE ALL OF SECTION 13, 14, 15, 23 AND THAT PORTION OF SECTION 16 EAST OF RAILROAD TRACKS ALL IN T3S, R83, PINAL COUNTY, ARIZONA.

DOCKET NO. W-02859A-04-0844

IN THE MATTER OF THE APPLICATION OF JOHNSON UTILITIES COMPANY FOR AN EXTENSION OF ITS EXISTING CERTIFICATE OF CONVENIENCE AND NECESSITY FOR WATER SERVICE.

DOCKET NO. WS-02987A-04-0869

PROCEDURAL ORDER

BY THE COMMISSION:

On November 24, 2004, Diversified Water Utilities, Inc. ("Diversified") filed with the Arizona Corporation Commission ("Commission") an application in Docket No. W-02859A-04-0844 for an extension of its Certificate of Convenience and Necessity ("CC&N") in Pinal County by either amending Decision No. 63690 (September 4, 2001)¹ or alternatively by treating the filing as a new application ("Diversified Application").

On December 3, 2004, Johnson Utilities Company ("Johnson") filed an application ("Johnson Application") for an extension of its CC&N in Pinal County. The area sought by Johnson overlaps with a portion of the extension area requested by Diversified.

On January 13, 2005, a Procedural Order was issued in the Johnson Application docket scheduling a hearing for April 18, 2005 and directing Johnson to publish notice of the application.

By Procedural Order issued February 16, 2005, Diversified was granted intervention in the Johnson Application docket.

On March 1, 2005, Diversified filed a letter stating that it supports consolidation of the

¹ Decision No. 63690 was amended by Decision No. 64062 (October 4, 2001) and Decision No. 65840 (April 22, 2003).

1 dockets and that it would soon be filing a request seeking to continue the hearing date. Diversified
2 also attached a letter from its President, Scott W. Gray, alleging improprieties by Staff in processing
3 the applications.

4 On March 2, 2005, a Procedural Order was issued consolidating the Diversified and Johnson
5 dockets and scheduling a Procedural Conference for March 7, 2005.

6 By letter filed March 4, 2005, Diversified requested that the March 1, 2005 filing be
7 withdrawn "and that any remaining copies be stricken from the docket."

8 Diversified also filed on March 4, 2005, an Application to Amend Decision No. 63960², As
9 Amended and Request for Expedited Action. Diversified argues that the underlying impediment to
10 Diversified being granted the expanded CC&N area at issue has been removed by a court decision
11 that invalidated an improvement district formed by Pinal County. Therefore, Diversified requests
12 that Decision No. 63960 be amended to grant Diversified the CC&N for the area sought in the above-
13 captioned dockets.

14 During the March 7, 2005 Procedural Conference, the parties discussed, among other things,
15 filing dates for a consolidated Staff Report and testimony, as well as hearing dates. A discussion was
16 also conducted regarding withdrawal of Diversified's March 1, 2005 filing. Staff requested that the
17 March 1, 2005 filing be "expunged" from the record³.

18 On March 10, 2005, Diversified filed a Motion to Consolidate. In its pleading, Diversified
19 requests that its Application to Amend Decision No. 63960 be consolidated with the pending CC&N
20 extension applications to "afford the Commission the opportunity, based upon an evidentiary record,
21 whether to treat this matter as an Application to Amend Decision Number 63960 or as new
22 applications for certificates of convenience and necessity."

23 On March 10, 2005, Staff filed a Response in the above-captioned dockets to Diversified's
24

25 ² Diversified filed this pleading only in the dockets to which Decision No. 63960 applies (*i.e.*, Docket Nos. W-02234A-
00-0371, W-02987A-99-0583, WS-02987A-00-0618, W-02859A-00-0618, W-02859A-00-0774, and W-01395A-00-
26 0784) (the "Decision No. 63960 Dockets").

27 ³ It is not clear whether the Commission has the authority to "expunge" or remove a document from the public record
28 once it has been filed. As an alternative to Staff's proposal, Docket Control will be directed to place an indication on the
original of the March 1, 2005 filing that the filing was subsequently withdrawn by letter filed March 4, 2005. If Staff
wishes to renew its request through a written Motion, it should provide citations for the Commission's authority to grant
the relief sought.

1 March 4, 2005 Filing in the Decision No. 63960 Dockets. Staff claims that it would not be proper to
2 amend Decision No. 63960 without a hearing given: the passage of time since the prior hearing; the
3 fact that Staff processed Diversified's request as a new application and Diversified did not previously
4 object to that process; and because there is already in place (through the above-captioned
5 consolidated dockets) a mechanism for considering the disputed CC&N area.

6 On March 11, 2005, Johnson filed a Response to Diversified's March 4, 2005 renewed
7 request to amend Decision No. 63960. Johnson argues that it would be inappropriate to rely on the
8 four year old evidentiary record created in the prior proceeding. Consistent with Staff's arguments,
9 Johnson contends that creation of a new evidentiary record in this proceeding will better serve the
10 public interest.

11 Diversified's renewed Application to Amend filed in the Decision No. 63960 Dockets, and its
12 Motion to Consolidate the renewed Application to Amend with the already consolidated dockets
13 captioned above, have created a great deal of unnecessary confusion. In the interest of affording all
14 parties adequate due process, the issues raised in the competing applications are best considered
15 through an updated hearing process in accordance with the dates discussed at the March 7, 2005
16 Procedural Conference. This process will best serve the public interest by producing an evidentiary
17 record that reflects the most current available facts.

18 IT IS THEREFORE ORDERED that the hearing in the above-captioned matters shall
19 commence on **June 7, 2005, at 10:00 a.m.**, or as soon thereafter as is practical, at the Commission's
20 offices, 1200 West Washington Street, Phoenix, Arizona 85007.

21 IT IS FURTHER ORDERED that, given Johnson's prior mailing/publication, the April 18,
22 2005 hearing date previously established for the Johnson Application shall be maintained as an
23 opportunity for public comment.

24 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105,
25 except that all motions to intervene must be filed on or before April 29, 2005.

26 IT IS FURTHER ORDERED that objections to any motions to intervene must be filed within
27 10 days of the request for intervention and no later than May 13, 2005.

28 IT IS FURTHER ORDERED that Diversified and Johnson shall jointly publish, by April 1,

2005, notice of the hearing in a newspaper of general circulation in the affected service areas, in the following form and style:

**PUBLIC NOTICE OF HEARING ON THE
APPLICATIONS OF DIVERSIFIED WATER UTILITIES, INC. AND
JOHNSON UTILITIES COMPANY
FOR EXTENSION OF THEIR CERTIFICATES OF
CONVENIENCE AND NECESSITY TO PROVIDE WATER SERVICE
(W-02859A-04-0844 and WS-02987A-04-0869)**

On November 24, 2004 and December 3, 2004, Diversified Water Utilities, Inc. ("Diversified") and Johnson Utilities Company ("Johnson"), respectively, filed applications with the Arizona Corporation Commission ("Commission") for extensions of their Certificates of Convenience and Necessity ("CC&Ns") to provide water service to an area in Pinal County, Arizona. The applications have been consolidated for purposes of hearing. If their respective applications are granted, either Diversified or Johnson would be the exclusive provider of water to the proposed areas, and would be required by the Commission to provide service under rates and charges and terms and conditions established by the Commission. The applications are available for inspection during regular business hours at the offices of the Commission in Phoenix, at 1200 West Washington Street, Phoenix, Arizona, and at the offices of the Company, [insert address].

The Commission will hold a hearing on this matter beginning on **June 7, 2005, at 10:00 a.m.**, at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona. Public comment will be taken on the first day of the hearing.

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Intervention shall be permitted to any person entitled by law to intervene and having a direct and substantial interest in the matter. Persons desiring to intervene must file a written motion to intervene with the Commission, which motion should be sent to all parties of record, and which, at the minimum, shall contain the following:

1. The name, address, and telephone number of the proposed intervenor and of any party upon whom service of documents is to be made if different than the intervenor.
2. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer of the Applicants, a shareholder of the Applicants, etc.).
3. A statement certifying that a copy of the motion to intervene has been mailed to the Applicants or their counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before April 29, 2005. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. Failure to intervene will not preclude any potential customer from appearing at the hearing and making a statement on such person's own behalf. You will not, however, receive any further notice of the proceeding unless requested by you.

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a

1 sign language interpreter, as well as request this document in an alternative format, by
2 contacting Linda Hogan, ADA Coordinator, voice phone number 602/542-3931, E-mail
Lhogan@admin.cc.state.az.us. Requests should be made as early as possible to allow
time to arrange the accommodation.

3 IT IS FURTHER ORDERED that Diversified and Johnson shall mail and/or jointly bear the
4 costs of mailing to each property owner in their requested extension areas a copy of the above notice
5 by April 1, 2005.

6 IT IS FURTHER ORDERED that Diversified and Johnson shall file certification of
7 mailing/publication as soon as practical after the mailing has been completed but not later than May
8 1, 2005.

9 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing of same,
10 notwithstanding the failure of an individual to read or receive the notice.

11 IT IS FURTHER ORDERED that Staff shall file a consolidated Staff Report by March 25,
12 2005. The prior March 11, 2005 deadline established for filing a Staff Report on the Johnson
13 Application is thereby extended accordingly.

14 IT IS FURTHER ORDERED that Diversified and Johnson shall file their Direct testimony by
15 April 22, 2005.

16 IT IS FURTHER ORDERED that Staff and Intervenors shall file Rebuttal testimony by May
17 13, 2005.

18 IT IS FURTHER ORDERED that Diversified and Johnson shall file Surrebuttal testimony by
19 May 23, 2005.

20 IT IS FURTHER ORDERED that the Commission's Docket Control shall place an indication
21 on Diversified's March 1, 2005 original filing, and any copies in the Docket Control files, that the
22 filing was subsequently withdrawn by letter filed March 4, 2005.

23 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
24 Communications) continues to apply to this proceeding as the matter is scheduled for public hearing.

25 ...

26 ...

27 ...

28 ...

1 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
2 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
3 hearing.

4 Dated this 16th day of March, 2005

5
6 

7 DWIGHT D. NODES
8 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

9 The foregoing was mailed/delivered
10 this 16 day of March, 2005 to:

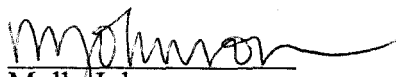
11 William P. Sullivan
12 Michael A. Curtis
13 CURTIS, GOODWIN, SULLIVAN, UDALL
& SCHWAB
14 2712 N. 7th Street
15 Phoenix, AZ 85006-1090
16 Attorneys for Diversified Water Utilities, Inc.

17 Jay L. Shapiro
18 Patrick J. Black
19 FENNEMORE CRAIG
20 3003 N. Central Avenue, Ste. 2600
21 Phoenix, AZ 85012
22 Attorneys for Johnson Utilities

23 Christopher Kempley, Chief Counsel
24 Legal Division
25 ARIZONA CORPORATION COMMISSION
26 1200 West Washington Street
27 Phoenix, AZ 85007

28 Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

ARIZONA REPORTING SERVICE
2627 N. Third Street, Ste. Three
Phoenix, AZ 85004-1003

26 By: 
27 Molly Johnson
28 Secretary to Dwight D. Nodes